

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TENNESSEE
at CHATTANOOGA

ELITE PHYSICIAN SERVICES, LLC,)	
)	
Plaintiff,)	No. 1:06-CV-86
)	
v.)	<i>Mattice/Carter</i>
)	
CITICORP CREDIT SERVICES, INC. (USA),)	
)	
Defendant.)	

DEFENDANT’S MOTION TO DISMISS OR TRANSFER

Comes Now Defendant, Citicorp Credit Services, Inc. (USA) (hereafter “CCSI”), pursuant to Federal Rule of Civil Procedure 12(b)(6), the first-to-file rule, and/or the prohibition against impermissible claim-splitting, and submits its Motion to Dismiss or Transfer.

Plaintiff, Elite Physician Services, Inc. (“Elite”), is engaged in impermissible forum and judge shopping. This matter was filed just three weeks after Chief Judge Curtis L. Collier ordered the transfer to the Southern District of New York of a parallel lawsuit previously filed by Elite against Citicorp Payment Services, Inc. (“CPSI”).¹ Elite’s concurrent lawsuits against CPSI and CCSI arise out of the same transaction or occurrence and involve virtually identical claims and substantially similar parties.

The first-to-file rule and the doctrine against claim-splitting prohibit such duplicative litigation because it unnecessarily [1] burdens the resources of the federal courts, [2] multiplies the costs of discovery and trial because both cases center on the same documents and witnesses,

¹ Elite Physician Services, LLC v. Citicorp Payment Services, Inc., in the United States District Court for the Eastern District of Tennessee, No. 1:05-cv-344, and now, in the United States District Court for the Southern District of New York, No. 1:06-cv-02447-BSJ.

and [3] opens the door for inconsistent and contradictory findings of fact and rulings of law on the same subject matter.

In support of its Motion to Dismiss or Transfer, CCSI attaches its Memorandum of Law with the following exhibits attached thereto:

Exhibit A – CPSI State Court Complaint

Exhibit B – CPSI First Amended Complaint

Exhibit C – CPSI Proposed Second Amended Complaint

Exhibit D – CCSI Complaint

Exhibit E – CCSI Civil Cover Sheet

Exhibit F – CCSI Proposed Agreed Order

Exhibit G – Affidavit of Bruce H. Schneider, Esq.

Exhibit H – Redline between CPSI Proposed Second Amended Complaint and CCSI Complaint

Exhibit I – Chart Comparing Elite’s Allegations in Elite I and Elite II

Exhibit J – Redline between CPSI First Amended Complaint and CPSI Proposed Second Amended Complaint and CCSI.

WHEREFORE, CCSI respectfully requests this Court to either [1] dismiss this case, or [2] transfer this matter to the Southern District of New York, where the first filed and related case against CPSI is now pending.

Respectfully Submitted,

BAKER, DONELSON, BEARMAN,
CALDWELL & BERKOWITZ, P.C.

By: s/ Joshua A. Powers

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*Attorneys for Defendant, Citicorp Credit Services,
Inc. (USA)*

CERTIFICATE OF SERVICE

I hereby certify that on September 22, 2006, a copy of the foregoing Motion to Dismiss was filed electronically. Notice of this filing will be sent by operation of the Court's electronic filing system to all parties indicated on the electronic filing receipt. All other parties will be served by regular U.S. Mail and Certified Mail, Return Receipt Requested. Parties may access this filing through the Court's electronic filing system.

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s/ Joshua A. Powers